

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROBERT WARDRICK
Plaintiff

v.

PATRICIA S. CONNOR, CLERK OF
THE COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Defendant

*

* CIVIL ACTION NO. AMD-07-911

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MEMORANDUM

Robert Wardrick (“Wardrick”) was sentenced to concurrent 300 and 120 month terms in the U.S. Bureau of Prisons for firearms violations under 28 U.S.C. § 922(g)(1) and 26 § 5861(d). *See United States v. Wardrick*, Criminal No. MJG-01-0217 (D. Md.). The convictions were affirmed on appeal and Wardrick’s 28 U.S.C. § 2255 motions were denied and dismissed.¹

Wardrick is confined at the United States Penitentiary at Beaumont, Texas. On April 6, 2007, he filed this ostensible 42 U.S.C. § 1983 action against the Clerk for the United States Court of Appeals for the Fourth Circuit and seeks release from confinement, damages, and a hearing. The statement of claim reads as follows:

The “Court’s records are in error” and Judge Shedd, Judge King, and Judge Duncan’s Clerk of U.S. Court of Appeals for the Fourth Circuit has refused to correct this error, the Clerk of the Court has already been given time to correct error. Judge Andre M. Davis laugh and made jokes of this error, Judge Marvin J. Garbis and friends in Court turned red in the face, then laugh and thought that this was funny. Well I am asking that the Court assist me in correction of this error, they thought that this error was true but the Clerk has refused my request.

Paper No. 1 at 4.

¹The Honorable Marvin J. Garbis dismissed Wardrick’s 28 U.S.C. § 2255 motion to vacate with prejudice. *See Wardrick v. United States*, Civil Action No. MJG-03-3592 (D. Md.). The appeal was dismissed by the United States Court of Appeals for the Fourth Circuit. On June 15, 2005, Wardrick’s second § 2255 motion was dismissed without prejudice as successive. *See Wardrick v. United States*, Civil Action No. MJG-05-1551 (D. Md.).

Because he appears indigent, Wardrick's motion to proceed in *forma pauperis* shall be granted. His complaint, however shall be dismissed without prejudice. The statement of facts contains no discernible civil rights claim. While Wardrick appears to maintain that his federal appellate court record contain erroneous information, he does not specify what information is wrong, how he has attempted to correct the errors, and how the information has caused him injury.

Further, Wardrick is apparently seeking release from custody more than alleged damages. Generally, court clerks enjoy derivative (absolute) immunity from damages when they are acting in obedience to judicial orders or under the court's direction.² *See McCray v. Maryland*, 456 F.2d 1, 5 (4th Cir. 1972). Wardrick's allegation appears to involve more than a clerical error. Any action to expunge purportedly erroneous information on the record would require a judicial order from the court. Therefore, based upon the limited facts here, the named defendant may be entitled to absolute judicial immunity. In any event, Wardrick's complaint fails to state a claim under § 1983.

For the aforementioned reasons, Wardrick's motion to proceed in *forma pauperis* shall be granted, but his complaint shall be dismissed without prejudice. An order follows.

Date: April 25, 2007

/s/
Andre M. Davis
United States District Judge

²This immunity does not apply in the performance of a clerk's ministerial duties. *See McCray*, 456 F.2d at 3-4 (court clerk's negligence in impeding the filing of a petition). A clerk's clerical duties are generally classified as ministerial. *Id.*